80-2201

NO_____

Office-Supreme Court, U.S.
FILED
MAY 21 1981
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STANLEY V. TUCKER,

Petitioner

vs.

HARTFORD ELECTRIC LIGHT CO,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

STANLEY V. TUCKER
Petitioner
Box 35
Hartford, Connecticut06101
203 528-0426

QUESTIONS PRESENTED FOR REVIEW

1. Must a state provide a hearing on counter-claims & set off before seizure of debtor's property?
2. Does Debtor have equal right to be own rent receiver?
3. Were awards of fees by state court for time in federal & bankruptcy court without jurisdiction?
4. Was award of fees and denial of redemption rights without due process and contrary to federal laws?
5. Is award of "attorneys fees" for "rent receiver" work violation of Sherman Anti-Trust Act

SUBJECT INDEX

	Page
Table of Authorities	i
Prior Action By This Court	1
Citation to Opinions Below	1
Jurisdiction	2
Provisions of Constitution & Laws Violated	2
Consolidation of Cases in Petition	1
State Statute Challenged as Unconstitutional	1
Questions Presented	Cover
Statement of the Case	3
SUMMARY OF ARGUMENT	4
SUBSTANTIAL REASONS FOR GRANTING THE WRIT	
I. EQUAL PROTECTION REQUIRES PETITIONER BE GIVEN EQUAL RIGHT TO BE RECEIVER	5
II. DUE PROCESS MANDATES GS 16-262 f BE DECLARED UNCONSTITUTIONAL	7
III. AWARD OF FEES WITHOUT DUE PROCESS	10
A. SECRET "CLOSED COURT" HEARING DENIES DUE PROCESS BY INADEQUATE NOTICE	10
B. STATE COURT LACKED "JURISDICTION" TO AWARD FEES FOR OTHER COURTS	12
C. FEES AWARDED BARRED BY ALYESKA	14
D. FEES AWARDED VOID WITHOUT ARTICULATION OF BASIS	15

Subject Index - Continued

	Page
III E FEES FOR BANKRUPTCY COURT BARRED BY RULE 12-38	18
III F FEES FOR FEDERAL COURT BARRED BY RES JUDICATA	18
III G FEE AWARD BARRED BY REDEMPTION ORDER OF NOV 4, 1977	19
IV DENIAL OF REDEMPTION A DENIAL OF EQUAL PROTECTION	20
V. RES JUDICATA DOES NOT BAR CIVIL RIGHTS ISSUES AS THEY ARE DISTINCT & DIFFERENT FROM FORMER ISSUES	20
VI AWARD OF "ATTORNEYS FEES" FOR "RECEIVER'S WORK" VIOLATES THE SHERMAN ANTI-TRUST ACT	22
CONCLUSION	22

TABLE OF AUTHORITIES

22 USC 1254 (1)	2
5th Amendment US Constitution	22
14th Amendment US Constitution	2
Bankruptcy Rule 12-28	2,18
15 USC 1	2,22
Aho v Clark 48 LW 2402	16
Alyeska Pipeline v Wilderness 421 US 240	14,15,22
Armstrong v Manzo 380 US 545, 552	8,11
Baldwin v Hale 1 Wall 223, 233	8

TABLE OF AUTHORITIES -continued

	Page
City of Utica v Gold Medal Packing 283 NY S 2d 603	12
Coe v Armour Fertilizer 237 US 413	11
Commissioner v Sunnen 333 US 598	21
Copper Liquor v Adolph Corrs Co 49 LW 2173	16
Crowe v Leeke 550 F 2d 184	21
Covey v Somers 351 US 141	11
Cromwell v County of Sac 94 US 311, 353	19
Federal Trade Com v National Lead Co 352 US 419	11
Fuentes v Shevlin 407 US 67	6,8
Hovey v Elliott 167 US 409	8
Goldfarb v Virginia 421 US 773	22
Grannis v Ordean 234 US 385	8
Graves v Oligiati 550 F 2d 1337	21
Jewell v Compton 557 P 2d 650	13
Johnson v Georgia Highway Express 488 F 2d 714	16

TABLE OF AUTHORITIES - continued

	Page
Lawlor v Nat Screen 349 US 322	21
Lynch v Household Finance 405 US 538	6
Ohio Realty v S. Bank of W Palm Beach 300 S02d 679	14
Mitchell v Grant 416 US 600	6,7,10,22
Mullane v Central Hanover 339 US 306	11
Preiser v Rodriguez 411 US 497	21
Roller v Holly 176 US 398	11
Snaidach v Family Finance 395 US 337	6
Tucker v Maher 405 US 1052	6
Walker v Hutchinson 352 US 112	11
Washington v Fairchild 224 US 510	10
Wright v Union Central Ins Co 311 US 273	20

PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

Petitioner prays that a writ of certiorari issue to review the judgment of the Conn. Sup. Court entered February 10th, 1981. Timely Petition for Re-Hearing filed and denied Feb 25, 1981.

PRIOR ACTION BY COURT

No prior action has been taken by This Court on this case.

CITATION TO OPINIONS BELOW

The Opinion of the Conn. Supreme Ct. is printed in the Appendix hereto, infra F1- F2. and published in the Conn. Law Journal Page 3, February 10th, 1981.

CONSOLIDATION OF CASES IN THIS PETITION

Pursuant to U. S. Supreme Ct rule 19 (4) two appeals heard by the Conn Sup Ct as one are combined herein.

STATE STATUTE CHALLENGED AS VOID AND UNCONSTITUTIONAL

Conn Gen Statute 16-262f adopted 12-1-75

GS 16-262 f reads in pertinent part...

"... the owner shall be liable for reasonable fees and costs for rent receiver.. and payment of reasonable attorneys fees..."

JURISDICTION

The Petition for Rehearing was denied Feb 25th, 1981. The jurisdiction of this Court invoked under 28 USC 1254 (1)

PROVISIONS OF THE U. S. CONSTITION VIOLATED BY CONN G.S. 16-262 f

5th Amend "No person shall be deprived of property without due process"

14th Amend "Nor shall any state deprive any person of property without due process of law; nor deny to any person within its jurisdiction equal protection of the laws"

BANKRUPTCY LAWS VIOLATED BY STATE COURT

Rule 12-28 "Reasonable compensation shall be allowed to such persons as assist debtor"

STATEMENT OF THE CASE

In this action Petitioner along with 10,000 others built properties in the 1960's to electric heat standard provided by respondent, HELCO, only to learn years later the standards fraudulent and be a slave captive market and therefore Petitioner filed suit, Htfd Sup. Court No 211212.

Because of enormous losses due to the electric heat rate frauds Petitioner became $4,500 delinquent on accounts and HELCO on 2-1-78 began seizure of $13,000/ month rents for 79 apartments in two cities 30 miles apart and about 60 miles from rent collector. So negligently the collections that they lasted 2 years with losses over $100,000 while rent receiver totally abandoned collections to build house near Rhode Island. See Petition to Withdraw. Appendix B 1.

In Nov 1977 Judge Kinney made a redemption order that the monies and pro

perty be turned over to Petitioner on accumulation of $5,000 in reserves for fees. Respondents ignored this redemption right and in a secret closed court appearance in absence of Petitioner obtained orders appro $24,000 in fees to collect $4,500 debt most of the time in federal court or bankruptcy court, where fees denied, or on clerical. None of the fees were for attorneys work but for rent receiver work.

This Petitioner denied a hearing on his counter-claims and was denied equal right to be rent receiver of his own property. HELCO refused to terminate its rent receivership until it instigated seven foreclosure actions and succeeded in the appointment of foreclosure rent receivers.

SUMMARY OF ARGUMENT

This is a classic case of ruthless violation of federally protected rights to equal protection and due

process by economic segregation under color of GS 16-262f. Petitioner was denied a "meaning hearing" when the rent receiver appointed without any opportunity for hearing of counter-claims as to rate frauds by HELCO.

Petiioner was denied equal protection by denial of right to be his own rent receiver while HELCO's receiver caused over $100,000 in loss.

Petitioner's redemption rights, federally protected were invaded, literally burned and destroyed by the state court. Award of attorneys fees for time in bankruptcy court and in federal court WITHOUT JURISDICTION and violate federal law.

ARGUMENT

I. EQUAL PROTECTION REQUIRES EQUAL RIGHT TO BE OWN RENT RECEIVER

This Court in a line of landmark decisions contoured the equal protection rights of property owners when

their property is seized under color of state law.

Snaidach v Family Finance	395 US 337
Lynch v Household Finance	405 US 538
Tucker v Maher	405 US 1052
Fuentes v Shevlin	407 US 67
Mitchell v Grant	416 US 600
Di Chem v N Georgia	419 US 601

In Mitchell, supra, a Lousisiana sequestration case this Honorable Court upheld the constitutionality of the challenged statute only because it provided equal protection to both debtor and creditor. While the Conn Sup Court dec sion sought to avoid the thrust of these cases by an attempt to distinguish pre-judgment this judgment is frivolous as judgment no entered until 11-14-79.

Mitchell v Grant" Court may order return of property & assess damages in favor of debtor inc. attorneys fees"
416 US at 606

Mitchell P 607 "Debtor may also regain possession by posting his own bond"

These "fundamental rights" approved in Mitchell, supra, if incorporated in GS 16-262 f would have meant that the $4,500 debt would have been collected by Debtor in 2 weeks from monthly rent roll of $13,000 and he would have been spared $100,000 in rent losses plus $24,000 in fees and the foreclosure of seven valuable properties.

The powerful command of this Court in Mitchell, supra, is that this action be reversed and remanded for full reconsideration of equal protection rights denied under color of state law 16-262f.

II. DUE PROCESS COMMANDS GS 16-262f BE DECLARED VOID FOR LACK OF A "MEANINGFUL HEARING"

From colonial times the echo of This Court's command has been that a "meaningful hearing" at which both parties can litigate all of their relevant rights is fundamental root

of due process.

Fuentes v Shevlin
407 US at 80

> For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin* v. *Hale*, 1 Wall. 223, 233. See *Windsor* v. *McVeigh*, 93 U. S. 274; *Hovey* v. *Elliott*, 167 U. S. 409; *Grannis* v. *Ordean*, 234 U. S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U. S. 545, 552.

The civil rights question is whether GS 16-262 f is facially defective in failing to permit Petitioner to assert counter-claims for rate fraud to offset HELCO's claims so that nothing net is due. This civil rights issue is whether procedural due process in the context of this care requires a hearing on counter-claims and set off before the State can authorize its agents to seize property in the possession of debtor on application of HELCO.

The narrow issue is - "Is the hearing meaningful if Petitioner is denied the right to plead & prove counter-claims."

GS 16-262 f "The sole purpose of the hearing is to determine if a sum is due and owing between owner & utility"

This language the State Court has applied to mean no counter-claims or set offs can be heard at the same time. Yet such an interpretation it is argued invades a fundamental federal right - the right to hearing on defenses before rents are seized. The refusal of the State Court to permit pleading of counter claims and its striking of counter-claims pleaded is a denial of the right to a "meaningful hearing." This is most clear from this court's ruling in Mitchell, supra, upholding constitutionality of Lousisiana sequestration statute because of built-in debtor-creditor equal protection & due proecss rights.

Michell v Grant

416 US at 607

> "This statutory procedure effects a constitutional accomodation of the conflicting interests of the parties."

How can any state court determine "if a sum is due and owing" if counter-claims and set-off canot be heard at the same time?

Washington v Fairchild
224 US 510

> "the hearing which must preceed the taking of property is not a mere form but owner must have the right to secure and present evidence material to the issue, it must be given opportunity to present proof and argument to controvert claim"

Petitioner was denied opportunity to plead and prove counter-claims essential to issue of whether any money due HELCO.

III AWARD OF FEES WITHOUT DUE PROCESS

A. SECRET "CLOSED COURT" HEARING DENIES DUE PROCESS BY INADEQUATE NOTICE

It is undisputed but that Petitioner did not appear when the fee orders made because he was given oral notice that

"no court in session because of judge's conference"

Judgments rendered by state & federal courts have been vacated many times over the years by This Honorable Court for failure to give adequate notice of the hearing at which rights were being litigated.

Coe v Armour Fertilizer Works
237 US 413

> "Extra-offical notice is not a substantial substitute for the due process of law which the U. S. Const Amend 14 requires"

To the same effect are Roller v Holly, 176 US 398, Federal Trade Com v National Lead Co, 352 US 419, Walker v Hutchinson 352 US 112, Mullane v Cental Hanover, 339 US 306, Covey v Somers, 351 US 141, Schroeder v NYC, 371 US 208, Armstrong v Manzo, 380 US 545.

The notice from clerk that "no court in session due to judge's conference" is hardly the type of notice calculated to find a secret closed door hearing conducted for HELCO's benefit.

III B. STATE COURT LACKED "JURISDICTION" TO AWARD FEES FOR OTHER COURTS

The exhibits of hours logged by rent receiver and attorney for HELCO need no testimony & none given as these are self-explanatory showing beyond any doubt but that most time was in other courts that is bankruptcy court and federal court and on other cases and spent driving from Rhode Island to scene of rents and time on clerical or inter-office phone calls and writings. These overhead times have not one word in record nor one word in testimony to show a "reasonable relationship" to collecting rents.

Two of the state supreme courts have squarely rejected blanket inclusion of time from other courts as "without jurisdiction"

City of Utica v Gold Medal Packing

283 NYS 2d 603 1967

The NY Supreme Court rejected mortgagees claims for fees for time in bankruptcy court and on counter-claims on grounds

that the language of the fee clause strictly construed was not broad enough to include attorney time in other courts. The specific mortgagee clause P 604 of City of Utica, supra, provided for reasonable fees to foreclose or collect the debt most analagous to the reasonable fees clause of the rent receiver statute GS 16-262 f.

With similar effect in 1977 the Oregon Supreme Court interpreting a clause in a note for "reasonable fees" to exclude fees on appeal since appeal was not mentioned in the fee clause. Jewell v Compton

557 P 2d 650

Simple examination of GS 16-262f on page 2 herein shows it to be barren of mention of appeal, of mention of federal court, of mention of bankruptcy court and applying the learned reasoning of the Oregon Supreme Ct most of fees award herein barred for lack of jurisdiction.

The Florida Supreme Court reached the same result in 1974:

Ohio Realty v S Bank of West Palm Beach
300 S o 2d 679 1974

"Mortgagee not entitled to fees on appeal in foreclosure absent clear indication parties intended mortgage and note to include fees on appeal"

CONNECTICUT'S STATE COURTS ARE ALONE AMONG THE 50 STATES AWARDING FEES WITH OUT JURISDICTION.

III C AWARD OF FEES BY CONN STATE COURT BARRED BY THIS COURT'S DECISION IN ALYESKA PIPELINE v WILDERNESS SOCIETY

As recently as 1974 This Honorable Court reached the same result as the New York, the Oregon and the Florida Supreme Courts in holding that the "American Rule" prohibiting fees except where specially allowed by law did not permit a court to "interpret" a law to grant fees where the language of the law did not so specifically allow.

Alyeska Pipeline v Wilderness Society
421 US 240 1974

"Only Congress, not the courts can authorize exceptions"

III D. AWARD OF FEES IN CONN. STATE COURTS VOID AS WITHOUT ARTICULATING FINDINGS REQUIRED BY FEDERAL LAW

In the interpretation of "reasonable fees" federal courts have written standards violated by the Conn. State Cts. These standards set forth rules to guide trial courts to be followed holding failure of trial court to articulate the application of these rules to make the decision void. In the lower Conn State Court there was no articulation of the standards followed and indeed the opinion showsn no standard followed other than a "gift" or giving of high "attorneys fees" to rent receiver for hardships in building home part time near Rhode Island while making token rent collections.

The clearest and most followed of the federal decisions is:

Johnson v Georgia Highway Express
488 F 2d 714 (CA 5) 1974

This decision set forth a set of rules or standards to be followed by courts in considering award of "reasonable fees". A recent 5th CA Panel vacated a fee award for failure to articulate how these standards were applied.

Copper Liquor v Adolp Corrs Co
49 LW 2173 Sept 9th, 1980

Other circuits have been more strict.

AHO v CLARK "42 USC 1988 provides a reasonable attorneys fees....

Nor can we conclude this suit was necessary..

Under thse circumstances 1988 does not mandate an award of fees.

BROWN v STACKLER
48 LW 2502 7th CA
1-21-80

Much of whatever research was done was done by law students on a voluntary basis. Little legal skill was involved, since the Virginia case was controlling and its pendency was known. The district court, finding the claim outrageously excessive, denied fees entirely. Such denial is an entirely appropriate means of encouraging counsel to maintain adequate records and submit reasonable, carefully calculated, and conscientiously measured claims when seeking statutory counsel fees. The statute provides that the court in its discretion "may" allow counsel fees. It has been said that "may" sometimes means "won't," and this extraordinarily aggravated situation is an appropriate occasion for giving the word that unusual meaning.

If the court were required to award a reasonable fee when an outrageously unreasonable one has been requested, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked for in the first place. To discourage such greed a severer reaction is needed, and the district court responded appropriately in this case.—Dumbauld, J.

—CA 7; Brown v. Stackler, 1/21/80.

III E CONN STATE COURT AWARD OF FEES FOR TIME IN BANKRUPTCY COURT BARRED BY RULE 12-28

The bankruptcy laws limit award of fees to Rule 12-28 - "reasonable compensation to such persons as assist debtor". The logging of times by respondents does not show any time assisting debtor but only the application for relief from stay. It is not up to the Conn. State Ct to amend laws passed by Congress This award is not only without jurisdiction but expressly barred by Rule 12-28. Alyeska Pipeline, supra, doctrine prohibits this award.

III F. STATE COURT AWARD OF FEES FOR FEDERAL COURT BARRED-RES JUDICATA

While respondents claimed fees for time in federal court the transcript of that court shows John Bullock applied to fees and in open court Chief Judge T. Emmett Claire denied the fees.

Cromwell v County of Sac
94 US 311, 353

"This rule provides when a court of competent jurisdiction entered final judgment on merits... parties bound as to every matter offered.. but as to any other admissible matter which might be offered"

III G. TRIAL JUDGE O'NEIL BARRED BY RES JUDICATA FROM FEE AWARD BY REDEMPTION ORDER OF NOV 1977 by JUDGE KINNEY

Just before the rent receivership started in Nov 1977 using figures supplied by John Bullock, counsel for HELCO, Judge Kinney made a redemption order, Appendix A, for a reserve of $5,000 for fees to the rent receiver and counsel for HELCO WITH FURTHER MONEY AND PROPERTY TO BE RETURNED TO PETITIONER & RECEIVER TERMINATED.

While this point in time was reached May 1977 the respondents ignored redemption and the fixed $5,000 amount and continued to collect for another year. Res Judicata clearly bars the award made, Cromwell, supra.

IV DENIAL OF FIXED REDEMPTION RIGHTS A DENIAL OF EQUAL PROTECTION

The redemption order by Judge Kinney called for restoration of property to Debtor on accumulation of $5,000 in reserve for fees which was reached late May 1977. This was a redemption order fully protected by the equal protection clause of the federal constitution.

Wright v Union Central Ins Co
311 US 273 1940

> "Power of court to order sale may not be exercised to deprive debtor of his redemption rights"

V. RES JUDICATA DOES NOT BAR THE CIVIL RIGHTS CHALLENGES AS THEY ARE DISTINCT & DIFFERENT FROM THOSE FORMERLY RAISED.

The Conn. Sup Ct applied res judicata rule erroniously to bar the civil rights issues but that rule only bars litigating the same civil rights issues again. In the Appellate Session this Petitioner sought to

challenge GS 16-262 f on grounds of confiscation of private property for public purposes without compensation and that court ruled against him.

However, that same issue is not raised herein. In this Petition all of the issues were never raised before and fall under the wlll known exception to res judicata.

Graves v Oligiati
550 F 2d 1337 1977 2nd CA

"We are puzzled at Judge Port's decision to dismiss the 1983 claim on grounds it was barred by res judicata 42 USC 1983 gives a federal remedy"

Monroe v Pape 365 US 166

Crowe v Leek
550 F 2d 184 1977 4th CA

"The dismissal of earlier prisoners class action did not bar later prisoners class action on grounds of res judicata where the second case raised matters different from first case & covered a time period different after first case"

Preiser v Rodrigues 411 US 497
Commiss. v Sunnen 333 US 598
Lawlor v Nat Screen 349 US 322

Prior Appellate Session 553 went to

judgment 7-21-78 but the orders on appeal were made 11-14-78 and 11-14-79. The time periods and issues raised are totally different. Res Judicata does not apply to civil rights issues.

VI AWARD OF "ATTORNEYS FEES" FOR RENT RECEIVERS WORK VIOLATES THE SHERMAN ANTI-TRUST ACT

The competitive thrust of the Sherman Anti-Trust Act reaches attorneys and bars award of high trial fees for doing routine work, clerical work, driving time and collecting rents.

Goldfarb v Virginia
421 US 773

> "A minium fee schedule for lawyers doing title exams violates Sec 1 of 15 USC"

CONCLUSION

Fee awards should be summarilly vacated on strength of Alyeska, supra. Civil Rights issues should be remanded for review on Mitchell v Grant or alternatively this Court should grant certiorari.

STANLEY V. TUCKER
PETITIONER

INDEX TO APPENDIX

	Page
Redemption Order 11-4-77	A1
Petition to Withdraw as Receiver Sept 29, 1978	B1
Comparative Order Showing $200/mo Paid Professional Rent Receiver	C1
Application For Receiver's Fees Heard June 22, 1979, Order Made Nov 14, 1979 Final Judgment	D1-D3
Application for Counsel Fees Order Made Nov 14, 1978	E1-E3
Supreme Court Decision Consolidated For Appeals for Counsel Fees & Appeal from Receiver's Fees 2-10-81	F1-F2
Order Denying Rehearing 2-25-81	G1

REDEMPTION ORDER Nov 4th, 1977
HELCO v TUCKER No 140007

in pertinent part....

2. Receiver shall set aside in reserve ($2,000) .. for a reasonable reserve for receiver fees & costs.

3. Receiver shall set aside in reserve ($3,000) .. for a reasonable attorneys fees & costs.

6. After payments by receiver.... any excess over those sums to be paid to respondent by receiver.

s/
FRANK J KINNEY
judge-Common Pleas

B 1

PETITION TO WITHDRAW AS RECEIVER
HELCO V TUCKER No 140007 Sept 1978

The application of Timothy W McNally respectfully represents:

1. Applicant is attorney appointed to act as receiver.

2. On Oct 19, 1978 applicant intends to move law practice to Putnam, Conn.

3. Increased distance from law office to properties makes it impossible to adequately perform duties as receiver.

Wherefore applicant prays for an order removing him as receiver.

s/_____
TIMOTHY W McNALLY

NOTE : This application never ruled on by Court but similar application in March 1979 granted Nov 14, 1979

C 1

COMPARATIVE ORDER SHOWING COMMERCIAL RENT RECEIVER PAID $200/MONTH

LITCHFIELD SAVINGS BANK v TUCKER
Litchfield Superior Court No CV 78-0028943

The Plaintiff and defendant stipulate:

1. Edgar Lee Arnold be appointed receiver of rents over property at 19 Nathaniel Street, Torrington.....

7. Receiever shall be compensated $200/month.

s/ Plaintiff s/ Defendant

O R D E R

The Stipulation is approved and made an order of this court.

s/ By The Court
COVELLO, Judge

D 1

HELCO v TUCKER No 140007
APPLICATION FOR RECEIVERS FEES HEARD IN ABSENCE OF PETITIONER JUNE 22, 1979 & ORDER MADE NOV 14, 1979

The Application of Timothy W McNally respectfully reprsents.....

6. Compensation for services.... at rate of of $40/hour ... for total of $12,340.

s/ TIMOTHY McNALLY

ACCOUNTING OF TIME

Hours	Date	Work
.5	1/9/79	Correspondence
3.5	1/10/79	Monthly Statement
.6	1/11/79	Telephone Call
3.0	1/12/79	Monthly Statement
1.8	1/13/79	Monthly Statement/ Telephone Call
3.5 42 miles	1/16/79	Drive Court Hearing
1.3	1/17/79	Telephone Calls
.7	1/18/79	Telephone Calls
.5	1/23/79	Telephone Calls
.5	1/25/79	Telephone Calls
6.0 121 miles	2/5/79	Drive collect rents

Hours	Date	Work
.6	2/8/79	Telephone Calls
1.6	2/14/79	Telephone Calls
.3	2/15/79	Letter
.6	2/20/79	Telephone Calls
.6	2/27/79	Telephone Calls
6.5 121 Miles	2/27/79	Drive collect rents
.5	4/5/79	Motion to Withdraw
1.4	3/6/79	Telephone Calls
.3	3/15/79	Read mail
.5	3/20/79	read mial
1.1	3/22/79	Telephone Calls
.5	4/2/79	Mail
.6	4/3/79	Telephone Calls
5.3 121 miles	4/4/79	Drive collect rents
.6	4/5/79	Mail
.6	4/5/79	Telephone Calls
.8	4/6/79	Accounting
.5	5/3/79	Telephone Calls
.6	5/3/79	Telephone Calls
.9	5/25/79	Mail

Hours	Date	Work
.6	6/4/79	Telephone Calls
1.3	6/5/79	Accounting
1.1	6/6/79	Accounting

JUDGMENT

Whereupon it is adjudged that the former receiver is awarded a fee of $12,000 less sums already paid plus $350 for bookeeping, $164 for bond fee, $1235 for telephone and $300 for mileage.

s/
BY THE COURT

November 14th, 1979

HELCO v TUCKER No 140007

APPLICATION & ORDER FOR COUNSEL FEES
APPEALED CONSOLIDATED IN CONN SUP CT

The application represents.....

7. Compensation at rate of $40/ hour for 121.6 hours total $4,864.

s/
JOHN C. BULLOCK

September 28, 1978 filed

STATEMENT OF SERVICES

HOURS	DATE	WORK
2.1	4/22/78	Bankruptcy Court
5.6	4/24/78	Bankruptcy Court
1.1	4/25/78	Telephone Calls
4.9	5/1/78	Federal Court
.9	5/2/79	Federal Ct Prep
4.6	5/3/78	Federal Ct Prep
1.3	5/4/78	Federal Ct Prep
1.0	5/5/78	Federal Ct Prep
1.5	5/8/78	Federal Ct Prep
2.8	5/9/78	Federal Ct
3.2	5/10/78	Federal Ct
2.9	5/11/78	Bankruptcy Ct

HOURS	DATE	WORK
3.5	5/12/78	Bankruptcy Court
2.7	5/17/78	Receivership prep.
4.0	5/18/78	Receiver Hearing
1.1	5/23/78	Federal Court prep
.4	5/30/78	Telephone Calls
3.3	5/31/78	Bankruptcy Court
2.5	6/8/78	Bankruptcy Court
.3	6/14/78	Telephone Calls
3.5	6/14/78	Receivrr Hearing
.4	6/19/78	Telephone Calls
.3	6/20/78	Telephone Calls
.7	7/5/78	Client Meeting
.8	7/24/78	Telephone Calls
2.0	7/27-28	Telephone Calls
2.4	8/2-3	Research
3.0	8/4/78	Prepare legal papers
11.0	8/8-13	Reseach
34.2	8/14-18	Hearing Receiver
.2	8/22/78	Internal report
1.9	8/25-28	Preparation Hearing
4.2	8/29/78	Bankruptcy Court
2.6	8/30/78	Mail/Conference
2.9	9/14/78	Bankruptcy Court

HOURS	DATE	WORK
1.8	9/15/78	Receiver Hearing

121.6 Total Hours

O R D E R

ORDERED, that applicant be allowed the following sums:

Services	$4,864.00
Expenses	217.91
Costs	9.80
Total	$5,091.71

BY THE COURT

s/ Assistant Clerk

November 14, 1978

CONN SUPREME CT 10083 and 10198
Both Arising from Htfd Sup No 140007
HELCO v TUCKER
February 10th, 1981

.....The defendant's claims three claims of error challenge constitutionality of receivership. Defendant cannot now relitigate the propriety of receiver ship because that question decided against him in earlier proceedings in Appellate Session. 35 Conn Sup 609. 401 A 2d 454 (1978). Res Judicata bars a second adjudication of the facial constitutionality of GS 16-262f.....

....there is no authority for the defendant's allegation that trial court constitutionally required to appoint him as rent receiver upon his offer to file an appropriate bond. Cases on which he relies ... are all distinguishable, since they all involve pre-judgment remedies.....

..... we find no error in the decision of trier with regard to finding of attorneys fees of $5091.71 and costs of $2,631.58.....

.... we reiterate defendant has pro vided this court with no basis upon which to find error in award to McNally of $12,000 (receiver fees) ...Defendant urges Judge O'Neil was barred from awarding fees higher than those awarded by Judge Kinney in his Order of Nov 4, 1977. Judge Kinney's order was expressly "subject to further order of this court.. by way of applications for receivers fees and costs and attorneys fees and costs. .....There is no error in the appeal in case No 10198 and case 10083.

HELCO V TUCKER

Connecticut Supreme Court

No 10083 and 10198

ORDER

ReHearing Denied.

February 25th, 1981

Office-Supreme Court, U.S.
FILED
JUL 22 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2201

Supreme Court of the United States

OCTOBER TERM, 1980

STANLEY V. TUCKER
PETITIONER

vs.

THE HARTFORD ELECTRIC LIGHT COMPANY
RESPONDENT

ON A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Counsel of Record
For Respondent:

John C. Bullock
P.O. Box 1110
Waterbury, Connecticut 06721
(203) 573-1200

IDENTIFICATION OF RESPONDENT

The Hartford Electric Light Company is a specially chartered electric utility company which operates within its franchise area in sections of the State of Connecticut. It is a wholly owned subsidiary of Northeast Utilities, a Massachusetts Business Trust. It is affiliated with the following other wholly owned subsidiaries of Northeast Utilities: The Connecticut Light and Power Company, Northeast Utilities Service Company, Western Massachusetts Electric Company, Rocky River Realty Company, Quinnehtuk Company, Northeast Nuclear Energy Company, and Holyoke Water Power Company.

TABLE OF CONTENTS

	Page
IDENTIFICATION OF RESPONDENT	i
TABLE OF AUTHORITIES	iii
CITATION TO OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW	iv
STATUTE WHICH THIS CASE INVOLVES	vi
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	5

TABLE OF AUTHORITIES

CASES

Hartford Electric Light Co. v. Tucker, 35 Conn. Sup. 609, 401 A.2d 454 (1978), cert denied 176 Conn. 765, 394 A.2d 202 (1978) ..... p. iv, 3

Mowery v. **Standard Oil Co. of Ohio,** 463 F.Supp. 762 (N.D. Ohio 1976), aff'd, 590 F.2d 335 (6th Cir. 1978) p. 4

STATUTES

15 U.S.C. §1 ..... p. 4

Connecticut General Statutes § 16-262f ..... p. vi

CITATION TO OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

The case before the Court was initiated in the Court of Common Pleas of the State of Connecticut in 1977 and given Docket No. 140007. Judgment of the trial court is unreported, and is set forth in the Record, p. 2. That judgment was appealed by petitioner to the Appellate Session of the Superior Court and assigned Docket No. AS 553. The decision of that Court is reported at 35 Conn. Sup. 609, 401 A.2d 454 (1978). Certification was denied by the Connecticut Supreme Court. 176 Conn. 765, 394 A.2d 202 (1978) Stay pending the filing of a petition for certiorari to this Court was denied by the Connecticut Supreme Court and by Mr. Justice Thurgood Marshall (1979). No petition for certiorari was filed. Following the original judgment, the case remained pending in the trial court for administration and supervision of the receiver.

In additional proceedings in the original action, petitioner was held in contempt (Record, p. 24) and his appeal to the Appellate Session, Docket No. AS 789, was dismissed.

On December 13, 1978, petitioner removed this case to the United States District Court for the District of Connecticut, Docket No. H-78-679. The case was remanded on December 18, 1978. Petitioner's appeal to the United States Court of Appeals for the Second Circuit, Docket No. 79-7035, was dismissed (1979).

In collateral proceedings, this action was twice stayed pursuant to Chapter XII proceedings initiated by petitioner in the United States Bankruptcy Court, Docket Nos. 77-649 and 78-211. In each case relief from stay was granted, and the bankruptcy proceedings were dismissed.

Also in 1978, petitioner collaterally attacked the original judgment in an independent action in the United States District Court, **Stanley V. Tucker** v. **Hartford Electric Light Company, et al.,** Docket No. H-78-217, seeking injunctive

relief against the pending state court receivership. Summary judgment for the respondent was granted on August 1, 1980, and no appeal was taken by petitioner.

The present matter before the Court concerns awards of attorney's fees and receiver's fees in the state court receivership case. Petitioner filed appeals from such awards to the Appellate Session, Docket Nos. 828 and 944. Both appeals were transferred to the Connecticut Supreme Court, Docket Nos. 10083 and 10198, and consolidated. The decision of the Connecticut Supreme Court is reported in Vol. 42 of the Connecticut Law Journal, No. 33, p. 3 (1981).

STATUTE WHICH THIS CASE INVOLVES

Connecticut General Statutes

Sec. 16-262f. Petition for receiver of rents; hearing; appointment; duties. Termination of receivership. Nonexclusivity of remedy. Contempt. (a) Upon default of the owner, agent, lessor or manager of a residential dwelling who is billed directly by an electric, gas, telephone or water company or by a municipal utility for utility service furnished to such building, such company or municipal utility may petition the superior court or a judge thereof, for appointment of a receiver of the rents or payments for use and occupancy for any dwelling for which the owner, agent, lessor or manager is in default. The court or judge shall forthwith issue an order to show cause why a receiver should not be appointed, which shall be served upon the owner, agent, lessor or manager or his agent in a manner most reasonably calculated to give notice to such owner, agent, lessor or manager as determined by such court or judge, including, but not limited to, a posting of such order on the premises in question. A hearing shall be had on such order no later than seventy-two hours after its issuance or the first court day thereafter. The sole purpose of such a hearing shall be to determine whether there is a sum due and owing between the owner, agent, lessor, or manager and the company or municipal utility. The receiver appointed by the court shall collect all rents or payments for use and occupancy forthcoming from the occupants of the building in question in place of the owner, agent, lessor or manager. The receiver shall pay the petitioner, from such rents or payments for use and occupancy, for electric, gas, telephone or water supplied on and after the date of his appointment. The owner, agent, lessor or manager shall be liable for such reasonable fees and costs determined by the court to be due the receiver, which fees and costs may be recovered from the rents or payments for use and occupancy under the control of the receiver, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service has been made. The owner, agent, lessor or manager shall be liable to the petitioner for

reasonable attorney's fees and costs incurred by the petitioner, provided no such fees or costs shall be recovered until after payment for current electric, gas, telephone and water service has been made and after payments of reasonable fees and costs to the receiver. Any monies from rental payments or payments for use and occupancy remaining after payment for current electric, gas, telephone and water service, and after payment for reasonable costs and fees to the receiver, and after payment to petitioner for reasonable attorney's fees and costs, shall be applied to any arrearage found by the court to be due and owing the company or municipal utility from the owner, agent, lessor or manager for service provided such building. Any monies remaining shall be turned over to the owner, agent, lessor or manager. The court may order an accounting to be made at such times as it determines to be just, reasonable, and necessary.

(b) Any receivership established pursuant to subsection (a) shall be terminated by the court upon its finding that the arrearage which was the subject of the original petition has been satisfied, or that all occupants have agreed to assume liability in their own names for prospective service supplied by the petitioner, or that the building has been sold and the new owner has assumed liability for prospective service supplied by the petitioner.

(c) Nothing in this section shall be construed to prevent the petitioner from pursuing any other action or remedy at law or equity that it may have against the owner, agent, lessor or manager.

(d) Any owner, agent, lessor or manager who collects or attempts to collect any rent or payment for use and occupancy from any occupant of a building subject to an order appointing a receiver shall be found, after due notice and hearing, to be in contempt of court.

STATEMENT OF THE CASE

The essential facts and proceedings of this action are set forth in the decision of the Connecticut Supreme Court of which review is sought. That decision is printed in full in the appendix to this brief. Briefly restating the essential facts, this action, begun in May, 1977, is a special statutory proceeding. Pursuant to Section 16-262f of the Connecticut General Statutes, in order to prevent termination of electric service to petitioner's tenants a receiver was appointed to collect rents at petitioner's residential apartment buildings and, from the proceeds, pay his delinquent utility accounts. The original judgment finding a delinquency of $9,031.77 and appointing a receiver (Record, p. 2) was appealed by petitioner in 1977. The judgment was affirmed, 35 Conn. Sup. 609, 401 A.2d 454 (1978), and petitioner's appeals ended with the denial of certification by the Connecticut Supreme Court, 176 Conn. 756, 394 A.2d 202 (1978). The action continued pending for the purpose of administration and supervision of the receiver.

The judgment presently before this Court concerns awards of attorney's fees and receiver's fees, pursuant to the same state statute, made at the end of the receivership proceedings. The trial court made awards of attorney's fees and costs totalling $7,723.29 (Record, pp. 35, 46) and of receiver's fees of $12,000.00 (less sums previously awarded) plus costs (Record, pp. 67-68). Petitioner challenged these awards on a variety of grounds in his appeals. The awards were affirmed by the Connecticut Supreme Court, and petitioner now seeks review by this Court.

SUMMARY OF ARGUMENT

The petition, to the extent it is comprehensible, presents no substantive federal question appropriate for review.

ARGUMENT

The petition fails to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration, and for that reason should be denied.

In response to petitioner's listing of "Questions Presented For Review" at the beginning of his petition, respondent asserts that there is no substantial federal question before this Court upon which a writ of certiorari should issue.

Petitioner's first question presented for review concerns the original judgment in this case finding a debt of $9,031.77 and appointing a receiver. Petitioner claims that he was not permitted at that time to plead a counterclaim and a "set-off." Issues regarding the establishment of the receivership in 1977 were fully adjudicated and appealed, culminating in the decision of the Connecticut Supreme Court to deny certification. **Hartford Electric Light Co.** v. **Tucker,** 35 Conn. Sup. 609, 401 A.2d 454 (1978), cert. denied, 176 Conn. 765 (1978). Petitioner did not seek a writ of certiorari from this Court at that time, and cannot now revive and relitigate those issues.

Petitioner's second question concerns his claim of a right to be appointed a rent receiver by the Connecticut Superior Court. Although petitioner never sought to be appointed as a receiver in this case, the Connecticut Supreme Court considered this claim and rejected it. That decision raises no federal question. While the substance of particular orders or acts of a court appointed receiver may raise issues of federal law, the appointment of a particular person to carry out those orders or perform those acts does not. Absent allegations of prohibited class based discrimination, the appointment of any particular person by a state court to faithfully execute its orders is discretionary with that court and an issue solely of state law.

Petitioner's third question is whether a state court may award attorneys' fees for services rendered in federal courts. First it should be pointed out that petitioner's claim of a

prior denial by the United States District Court of attorney's fees for the same work is false. In any case, the fee awards presently under consideration were made pursuant to state law. Section 16-262f of the Connecticut General Statutes provides for an award of "reasonable attorney's fees and costs incurred by the [utility]." Thus the court had jurisdiction to make the contested awards, and its interpretation of the statutory provision to encompass collateral proceedings in federal courts was a matter solely of state law.

Petitioner's fourth question concerns an interlocutory order that authorized the establishment of reserves for payment of receiver's and attorney's fees and costs, "subject to further order of this court." The awards ultimately made and affirmed were larger than those reserves. Whatever rights petitioner may have had in limiting fee awards to the originally estimated amounts reserved are not established by federal law. Petitioner's claim of a constitutional violation in subsequent awards of fees larger than those original reserves is frivolous.

Petitioner's fifth question presented for review is whether the Sherman Anti-Trust Act, 15 U.S.C. § 1, was violated by the award of receiver's fees. Petitioner has made no allegation in any court that that award was pursuant to "(1) a contract, combination or conspiracy; (2) affecting interstate commerce, and (3) an unreasonable restraint of trade." **Mowery** v. **Standard Oil Co. of Ohio,** 463 F. Supp. 762, 765 (N.D. Ohio 1976), aff'd, 590 F.2d 335 (6th Cir. 1978). His claim of an anti-trust violation is therefore without substance and frivolous.

CONCLUSION

The petition presents no substantive questions of federal law for review, and should be denied.

Respectfully submitted,

THE HARTFORD ELECTRIC LIGHT COMPANY

By John C. Bullock
Carmody & Torrance
P.O. Box 1110
Waterbury, Connecticut 06721
(203) 573-1200

Its Counsel

APPENDIX

SUPREME COURT

December Term, 1980

HARTFORD ELECTRIC LIGHT COMPANY v.

STANLEY V. TUCKER

(2 cases)

Bogdanski, Peters, Wright, Brennan and F. Hennessy, Js.

Argued December 4, 1980—decision released February 10, 1981.

Action for the acceptance of the report of a receiver of rents and for an award of attorney's fees, and application for the allowance of receiver's fees and costs, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford and tried to the court, **N. O'Neill, J.**; judgment for the plaintiff, from which the defendant appealed to this court. **No error.**

Stanley V. Tucker, pro se, the appellant (defendant).
John C. Bullock, for the appellee (plaintiff).

Peters, J. These appeals arise out of a utility receivership. The plaintiff, Hartford Electric Light Co., on June 22, 1977, obtained the appointment of a receiver pursuant to General Statutes § 16-262f. The defendant, Stanley V. Tucker, immediately appealed from that and related orders, chal-

lenging both their propriety and their constitutionality. The Appellate Session of the Superior Court found no error; **Hartford Electric Light Co.** v. **Tucker,** 35 Conn. Sup. 609, 401 A.2d 454 (1978); and this court denied certification; 176 Conn. 765, 394 A.2d 202 (1978). The orders challenged by the defendant's present appeals arise out of the judgment rendered on November 14, 1978, and supplemented on June 22, 1979, in which, after hearing, the utility receivership was terminated and certain costs and fees were assessed.

The underlying facts are undisputed at this time. The plaintiff initiated a statutory action pursuant to General Statutes § 16-262f[1] for the appointment of a receiver of rents for a number of apartment buildings owned by the defendant. After a hearing in June, 1977, the trial court, **Allen, J.,** found the defendant to be indebted to the plaintiff for $9,031.77 and appointed a receiver. That receiver was subsequently replaced by Timothy W. McNally by an order of the trial court, **Kinney, J.,** on November 18, 1977. After a number of interim proceedings to implement the utility receivership, that receivership was terminated on November 14, 1978, by the trial court, **N. O'Neill, J.,** and control of the properties was transferred to a foreclosure receivership initiated by several banks holding mortgages on the subject properties. Only issues arising out of the utility receivership are presently before us, since this appeal is limited to disputes between this plaintiff and the defendant.

The defendant, appearing pro se, claims that the trial court erred in its approval and administration of the utility receivership, in its award of attorney's fees, in its approval of the report of the rent receiver, and in its award of fees to the rent receiver. We note that our review of the defendant's claims is complicated by the absence of an adequate record. Although mindful of the solicitude afforded to pro se litigants, we can only consider those claims concerning which we have enough information for the review process to operate.

---

[1] General Statutes § 16-262f (see pp. vi — vii of this brief)

I

The defendant's first three claims of error challenge the constitutionality of the utility receivership. The defendant cannot now relitigate the propriety of the receivership per se, because that question was decided against him in the earlier proceedings in the Appellate Session. 35 Conn. Sup. 609, 401 A.2d 454 (1978). Res judicata bars a second adjudication here of the facial constitutionality of General Statutes § 16-262f. **Corey** v. **Avco-Lycoming Division,** 163 Conn. 309, 316-17, 307 A.2d 155 (1972), cert. denied, 409 U.S. 1116, 93 S. Ct. 903, 34 L. Ed. 2d 699 (1973); **Bridgeport Hydraulic Co.** v. **Pearson,** 139 Conn. 186, 196, 91 A.2d 778 (1952).

There is no authority in law for the defendant's allegation that the trial court was constitutionally required to appoint him as rent receiver upon his offer to file an appropriate bond. The cases on which he relies, in which the Supreme Court of the United States has developed standards of procedural due process in the area of property rights, are all cases distinguishable from the present litigation, since they all involved prejudgment remedies. See, e.g., **North Georgia Finishing, Inc.** v. **Di-Chem, Inc.,** 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 751 (1975); **Mitchell** v. **W. T. Grant Co.,** 416 U.S. 600, 94 S. Ct. 1895, 40 L. Ed. 2d 406 (1974); **Fuentes** v. **Shevin,** 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, reh. denied, 409 U.S. 902, 93 S. Ct. 177, 34 L. Ed. 2d 165 (1972). While a putative debtor may have a constitutionally protected right to substitute a bond for a lien **before** there has been a judgment against him, he has no such right, under the cases and the statutes, **after** there has been a judgment, upon a hearing, affirming his indebtedness. Our statutes permitting dissolution of a lien upon the substitution of a bond are addressed, as were the statutes involved in the Supreme Court cases, to prejudgment liens. See General Statutes §§ 52-304 (attachment lien) and 49-37 (mechanic's lien).

There is no basis in fact for the defendant's allegation that he was not given sufficient notice of the dissolution

hearing in the trial court that accepted the receiver's report and terminated the utility receivership. In his letter dated November 2, 1978, to the presiding judge, Judge O'Neill, the defendant expressly acknowledged receipt of a letter from counsel for the plaintiff concerning the disputed November 14, 1978 hearing. We have been referred to no other record concerning the procedures at that hearing. In the absence of a transcript, we cannot look behind the presumption of regularity of service of process and of notice that attaches to judicial proceedings in courts of general jurisdiction. See **Monroe** v. **Monroe,** 177 Conn. 173, 185, 413 A.2d 819, appeal dismissed, cert. denied, 444 U.S. 801, 100 S. Ct. 20, 62 L. Ed 2d 14 (1979); **Lampson Lumber Co.** v. **Hoer,** 139 Conn. 294, 298, 93 A.2d 143 (1952). There is therefore no evidence to support the defendant's assertion that he was denied procedural due process.

We conclude therefore that the defendant's direct constitutional challenges to General Statutes § 16-262f must fail. The statute adequately provided him with an effective opportunity to be heard and with proper notice thereof. The defendant had the right, at a number of different junctures, to present evidence and to cross-examine the plaintiff's witnesses. In contradistinction to General Statutes § 49-14, the mortgage foreclosure statute found unconstitutional in **Society for Savings** v. **Chestnut Estates, Inc.,** 176 Conn. 563, 573-77, 409 A.2d 1020 (1979), this statute does not violate procedural due process on its face and did not violate procedural due process as applied in this case.

II

The defendant's next claims of error relate to the award of attorney's fees and costs in the amount of $5091.71 and $2631.58. The utility receivership statute expressly provides that "[t]he owner . . . shall be liable to the petitioner for reasonable attorney's fees and costs incurred by the petitioner." The defendant challenges this provision as being

unconstitutionally devoid of standards, and challenges the trial court's findings pursuant thereto. We find no error in either regard.

The defendant's attack on the constitutionality of a statutory provision for "reasonable attorney's fees and costs" as devoid of standards cannot be sustained. Statutes providing for an award of attorney's fees customarily state no other limitation than reasonableness; see, e.g., General Statutes §§4-197, 22a-44, 33-334, 36-407, 36-449, 47a-18, 52-251; 15 U.S.C. § 15; 42 U.S.C. § 1988; nor would any other limitation appear to be practicable. The defendant's constitutional protection from excessive awards is to be found in the undisputed requirement that the reasonableness of attorney's fees and costs must be proven by an appropriate evidentiary showing. See **Stelco Industries, Inc.** v. **Cohen,** Conn. (42 Conn. L.J., No. 26, pp. 4, 6) (1980). Procedural due process is accorded to the defendant because he is provided the opportunity to present evidence of his own and to cross-examine the witnesses of the plaintiff with respect to the question of reasonableness. See **Society for Savings** v. **Chestnut Estates, Inc.,** supra. The defendant has cited no case, nor have we discovered any, that establishes any further constitutional requirement.

The defendant makes a two-pronged attack on the trial court's factual finding as to fees and costs. On the one hand, the defendant urges that Judge O'Neill was precluded from awarding fees higher than those previously ordered by Judge Kinney, in his order of November 4, 1977. Judge Kinney's order was, however, expressly made "subject to further order of this Court . . . by way of approval of applications for receiver's fees and costs and attorney's fees and costs," and, thus, by its own terms permitted further awards by Judge O'Neill. On the other hand, the defendant urges that the sums awarded were unreasonable. Since the award of attorney's fees and costs constitutes a finding of fact, our review of the award is limited to a determination of whether the decision of the trier was clearly erroneous in light of the evidence and the pleadings in the record as a whole. Practice Book, 1978, § 3060D; **Stelco Industries,**

Inc. v. **Cohen,** supra; **Pandolphe's Auto Parts, Inc.** v. **Manchester,** Conn. (41 Conn. L.J. No. 51, pp. 6, 7) (1980). We find no error in the decision of the trier with regard to its factual finding that attorney's fees of $5091.71 and costs of $2631.58 were reasonable. It may well be true that awards based on hourly rates may under some circumstances be inappropriate, but the defendant has produced no evidence that the trier was bound to believe that consideration of hours spent and of reasonable hourly rates was inappropriate in this case. The defendant's assertion that the attorney was incompetent was likewise an assertion to be evaluated by the trier of fact and not by this court. Finally, the trier was entitled to consider reasonable the time and effort expended by the attorney in defending his client in various federal court proceedings even though the federal court, operating under different guidelines,[2] did not award such fees. In short, all of the defendant's complaints about the attorney's fees were matters to be considered by the trial court in its determination of what was reasonable in light of all of the circumstances before it. See **King** v. **Greenblatt,** 560 F.2d 1024, 1026 (1st Cir. 1977). Nothing that has been presented on this appeal warrants our redetermination of the trial court's findings of fact.

III

The defendant's claims of error with regard to the trial court's acceptance of the final report of the receiver McNally charge failures of management and accounting with respect to the receivership. The defendant also alleges that, upon termination of the utility receivership, proceeds were available that should have been disbursed to him. None of these

---

[2] A federal bankruptcy court has no jurisdiction to award attorney's fees until the proceedings before it result in the creation of a bankruptcy res. See 11 U.S.C. § 105 (1978). In this case, the plaintiff successfully opposed the defendant's efforts to interpose bankruptcy proceedings.

claims can survive the factual findings of the trial court to the contrary; again no evidentiary basis has been provided for a challenge in this court to these findings. Since, as we have concluded, Judge O'Neill had the power to assess the receivership with costs and fees greater than those initially awarded, on an interim basis, by Judge Kinney, his power extended to the expenses incident to the receivership as well as to the fees properly charged by the plaintiff's attorney.

The defendant's underlying challenge to the administration of the receivership appears to rest on the perceived injustice of permitting a utility receivership to take rent receipts as a first lien, without regard to the costs of maintenance or mortgage obligations. It may well be true that utility receiverships will often, as in this case, lead to foreclosure receiverships and thus risk further impairment of inner city housing stock. This court is, however, not the proper audience to which to address such arguments of public policy. **Laurel Bank & Trust Co.** v. **Mark Ford, Inc.,** Conn. (42 Conn. L.J., No. 24, pp. 8, 9) (1980); **General Motors Corporation** v. **Mulquin,** 134 Conn. 118, 132, 55 A.2d 732 (1947). The legislature might have concluded that a utility receivership is a remedy required as a tradeoff for the limitation imposed on the utility's right to terminate service for nonpayment of utility bills. Such limitations were enacted as part of the same legislation, Public Acts 1975, No. 75-625,[3] now General Statutes § 16-262c et seq., as that authorizing the utility receivership.

---

[3] The legislative history of Public Acts 1975, No. 75-625 indicates that the legislature was aware of the fact that its enactment would permit utility bills, in the event of a receivership, to take priority over mortgage and insurance payments. 18 H. R. Proc., Pt. 9, 1975 Sess., pp. 4354-55.

IV

The defendant's final claims of error challenge the award of fees to the receiver McNally for his services during the utility receivership.[4] In large part, these claims duplicate the defendant's challenge to the award of attorney's fees, discussed earlier in this opinion. Again we note that the utility receivership statute, General Statutes § 16-262f, expressly authorizes the award of "reasonable fees and costs determined by the court to be due the receiver." Again we reiterate that the defendant has provided this court with no basis upon which to find error in the determination of Judge O'Neill that he had the authority to award McNally a fee of $12,000 (less the sums previously awarded by Judge O'Donnell, plus costs). The trial court expressly found that the receiver "has spent over 300 hours working on this case. He has been diligent in the face of enormous interference from the defendant." Such interference is documented by the earlier judgment of the trial court, **Satter, J.**, holding the defendant in contempt, pursuant to § 16-262f (d), for collecting rents that were to have been turned over to the receiver. There is therefore no justification for the defendant's attack on Judge O'Neill's conclusions of fact and law. See **Jacobs** v. **Ringling Bros.-Barnum & Bailey Combined Shows, Inc.**, 141 Conn. 86, 94, 103 A.2d 805 (1954). We note in particular that the defendant's claim of bias and prejudice on the part of Judge O'Neill is completely unwarranted.

The defendant raises two further challenges to the legality of Judge O'Neill's award. One argument reiterates the proposition, addressed earlier in this opinion, that § 16-262f is constitutionally deficient in failing to set adequate standards for the award of fees and costs. The second argument suggests that the Connecticut Anti-Trust Act; General Statutes §§ 35-24 through 35-45; bars an award to the receiver

---

[4] These claims of error are the subject matter of the defendant's second appeal, in case No. 10083; the matters previously discussed arise out of the appeal in case No. 10198.

at the rate of $40 per hour because the plaintiff allegedly contracted and conspired with the receiver to fix prices for his services at an unreasonably high "attorney rate" for work that could have been done less expensively by someone who was not an attorney. This second argument was not presented to the trial court, and there is no evidence whatsoever before us that supports it. We are therefore not able to respond to it in any fashion.

There is no error in the appeal in case No. 10198 or in the appeal in case No. 10083.

In this opinion the other judges concurred.